

ATTORNEY'S HANDBOOK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
March 2004

TABLE OF CONTENTS

THE CLERK'S OFFICE	1
Office Structure and Informational Requests	2
Pro Se Matters	4
Dockets Maintained and Numbering of Cases	5
Miscellaneous Docket	7
Public Access to Docket Information.....	8
Electronic Case Filing	9
Copy Requests.....	10
Filing of Documents Outside Normal Office Hours	11
A LAWSUIT	12
Requirements for Filing a Civil Lawsuit	13
Service of Process	15
Entry and Withdrawal of Appearance	18
Amended Complaints and Amendment of Other Pleadings	19
Consent to Magistrate Judge	20
Pretrial Procedures	21
Discovery	22
JUDGMENT	23
Effective Date and Form of Judgment.....	23
Bills of Costs.....	24
Default Judgments.....	25
Collection of Judgment	26
APPEALS	28
Designation of Record.....	29
Withdrawal of Record on Appeal.....	30
COURT PROCEDURES	31
Bar Admission.....	31
Attorney Discipline	32
Civil Legal Assistance Panel.....	32
Emergency Matters; Motions Judge.....	33
Motions Practice	35
Procedures for Filing Notice of Removal.....	38
Custodian of Files/Exhibits	39
Courtroom Deputy Clerks	40
In Court	41
The Official Record.....	42
Bankruptcy Matters in District Court.....	42
FINANCIAL	44
Fees and Costs Payable to the Clerk	44
Post Judgment Interest Rates.....	44
Investment and Withdrawal of Funds Placed in the Court's Registry Account; Registry Fees	45
Security for Costs.....	47
MISCELLANEOUS	48
Filing by Mail in Federal Court.....	48
Transfer and Reassignment of a Case	49
Motion to Quash or Enforce Discovery Process in Foreign (non-District) Litigation.....	50
Civil Legal Assistance.....	50
Court Reporters and Transcripts.....	53
ADR/Arbitration/Summary Jury Trial.....	55
Notice of Attack upon Constitutionality of Federal or State Legislation	56
APPENDIX.....	57

THE CLERK'S OFFICE

This *Handbook* is provided as a supplement to the Local Rules of the Southern District of Indiana to assist attorneys and litigants in dealing with the administrative requirements of the Court and the Clerk's Office. Its scope is limited to civil matters. Every effort has been made to be accurate, but for definitive guidance on procedural matters you should refer to the applicable *Federal Rules of Civil Procedure* and/or the *Local Rules of the Southern District of Indiana*.

The Southern District of Indiana is one of two federal judicial districts in the State of Indiana. It was created pursuant to 28 U.S.C. § 94 and is divided into four Divisions--Evansville, Indianapolis, New Albany and Terre Haute. The Clerk maintains and staffs an office within each of these Divisions. The various counties designated by statute as within each of the four Divisions are the following:

Evansville Division

Voice (812) 434-6410
Fax (812) 434-6418
304 Federal Building
Evansville, IN 47708

Counties:

Daviess, Dubois, Gibson, Martin, Perry, Pike, Posey,
Spencer, Vanderburgh and Warrick

Indianapolis Division

Voice (317) 229-3700
Fax (317) 229-3959
105 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

Counties:

Bartholomew, Boone, Brown, Clinton, Decatur,
Delaware, Fayette, Fountain, Franklin, Hamilton,
Hancock, Hendricks, Henry, Howard, Johnson,
Madison, Marion, Monroe, Montgomery, Morgan,
Randolph, Rush, Shelby, Tipton, Union, and
Wayne

New Albany Division

Voice (812) 542-4510
Fax (812) 542-4515
210 Federal Building
New Albany, IN 47150

Counties:

Clark, Crawford, Dearborn, Floyd, Harrison,
Jackson, Jefferson, Jennings, Lawrence, Ohio,
Orange, Ripley, Scott, Switzerland and Washington

Terre Haute Division

Voice (812) 234-9484
Fax (812) 238-1831
207 Federal Building
Terre Haute, IN 47808

Counties:

Clay, Greene, Knox, Owen, Parke, Putnam,
Sullivan, Vermillion and Vigo

In an effort to provide better service to the Bar and public, we welcome any comments or suggestions for improving this *Handbook*. Please direct comments or suggestions to: Administrative Handbook, Office of the Clerk, U.S. District Court, Room 105, U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

Office Structure and Informational Requests

The Clerk's Office is staffed by both operational and administrative staff. We are dedicated to serving the Judges, the Bar and the public in every appropriate manner to assist in the creation and maintenance of records and information pertinent to litigation in this District. Reliable and accessible records are the backbone of the courts. The majority of the Clerk's staff with whom attorneys and members of the public most often come into contact are "operational" personnel, in the sense that these deputy clerks maintain extensive "hands-on" contact with the case files.

Inquiries in the Indianapolis Division regarding the following specific areas should be directed to the telephone numbers below:

Administrative Matters	317-229-3702
Appeals (civil and criminal)	317-229-3918
Case Intake	317-229-3700
Financial Matters	317-229-3745
Jury Administrator	317-229-3712
Pro Se Matters	317-229-3950
Operations Manager	317-229-3710

In the outlying divisions, inquiries should be made directly to the Clerk's office.

Inquiries regarding scheduling matters or the status of pending cases should be directed principally to the courtroom deputy. **Inquiries should not be directed to the chambers of a judicial officer.**

The names and telephone numbers of the courtroom deputies for the judicial officers are as follows:

<u>Judicial Officer</u>	<u>Courtroom Deputy</u>	<u>Phone Number</u>
Judge Barker	Barbara Williamson	317-229-3602
Judge Hamilton	Charles Bruess	317-229-3724
Chief Judge McKinney	Karen McCord	317-229-3723
Judge Tinder	Anne Perry	317-229-3682
Judge Young	Dana Shuler (Evansville cases)	812-434-6414
	Christina Leighty (Indianapolis cases)	317-229-3725
Judge Dillin	Christina Leighty	317-229-3725
Magistrate Judge Baker	Amy Retz	317-229-3707
Magistrate Judge Shields	Michelle Imel	317-229-3672

Magistrate Judge Hussmann	Frances Deason	812-465-6302
Magistrate Judge Lawrence	Jennifer Ong	317-229-3615
Recalled Magistrate Judge Foster	Mary Helen Kramer	317-229-3622
Recalled Magistrate Judge Godich	Debbie Mitchell	317-229-3630

The Chief Deputy Clerk has overall responsibility for the functioning of the Clerk's Office, and acts for the Clerk in the Clerk's absence. The telephone number for Jo McKnight, the Chief Deputy Clerk, is (317) 229-3703.

Greg Barnes is the Clerk's Office Operations Manager. He is in charge of the Clerk's operations staff in the Indianapolis Division (Intake, Case Administration and Jury Matters). His telephone number is (317) 229-3710.

Questions presented to the Clerk's staff should be directed to the person believed to be most closely associated with the fact or procedure to which the question relates.

Pro Se Matters

Members of the Court's staff are assigned to coordinate the flow of *pro se* litigation through the Court. These clerks are familiar with forms available for various specific proceedings, such as habeas corpus actions and the complaint forms prescribed in Local Rule 8.1 (complaints under 42 U.S.C. § 1983, 42 U.S.C. § 405(g), and any complaint alleging employment discrimination under a federal statute). Other than routine inquiries (such as whether something has been filed, etc.), questions concerning the status and development of a specific case in which one of the litigants is *pro se* should be directed to this staff at (317) 229-3950. When filing a motion for summary judgment, counsel must comply with the duty imposed by *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982), to inform a *pro se* litigant in straightforward English of the nature of the motion, of the proper manner in which to respond and of the consequences of failing to respond.

Dockets Maintained and Numbering of Cases

The Clerk maintains three principal categories of cases--civil, criminal and miscellaneous. Each case filed with the Court is given a permanent cause number designation. The docket sheet is an index of the file.

a. Civil Case Number

A civil case number consists of various components, these being

- (1) the division in which the case was filed (for cases filed prior to July 1, 2002, divisions are designated by initials: IP for Indianapolis, TH for Terre Haute, EV for Evansville; NA for New Albany; for *civil* cases filed *on or after July 1, 2002*, the division designation is numerical - 1 stands for Indianapolis, 2 for Terre Haute, 3 for Evansville and 4 for New Albany);
- (2) the year of its filing;
- (3) its reference number;
- (4) the category to which it belongs--civil ("C" for cases filed prior to July 1, 2002, and "cv" for cases filed on or after July 1, 2002);
- (5) the District Judge to whom the case is assigned (for cases filed prior to July 1, 2002, a single initial is used; for cases filed on or after July 1, 2002, three initials are used); and
- (6) the Magistrate Judge to whom the case is assigned (for cases filed prior to July 1, 2002, a single initial is used [and to prevent duplication of initials, Magistrate Judge Tim A. Baker's assigned initial was "K"], for cases filed on or after July 1, 2002, three initials are used).

Thus, by way of illustration, the 70th civil action filed in the Indianapolis Division in 2001, if assigned to Judge Barker and Magistrate Judge Shields would be depicted as follows: **IP 01-70-C-B/S**.

On or after July 1, 2002, the 2000th civil action filed in the Indianapolis Division, if assigned to Judge Barker and Magistrate Judge Shields would be depicted as follows: **1:02-cv-2000-SEB/VSS**.

b. Miscellaneous Cases

Matters presented as Miscellaneous Cases use the following format:

- (1) the category to which it belongs--miscellaneous;
- (2) the year of its filing;
- (3) its reference number; and
- (4) the division in which the case was filed (expressed by initials - IP for Indianapolis, TH

for Terre Haute, EV for Evansville; NA for New Albany)

Thus, by way of illustration, the 10th miscellaneous matter filed in the Indianapolis Division in 2001 would be depicted as: **MISC 01-10-IP**. Miscellaneous matters are generally assigned to the Judge serving as motions judge at the time the matter is submitted. Attorney disciplinary matters are all assigned to the Chief District Judge.

c. Criminal Case Number

The format used for cases presented as criminal cases is the same as for civil cases prior to July 1, 2002, except that the "C" is replaced by a "CR" and each defendant in a multi-defendant criminal action is assigned a numerical designation. Thus, an example of a criminal action cause number in a multi-defendant criminal action assigned to Judge Tinder and Magistrate Judge Foster pertaining specifically to the sixth designated defendant in the charge is the following: **IP 97-521-CR-06-T/F**.

Miscellaneous Docket

Miscellaneous case numbers are normally assigned to matters not considered regular civil or criminal cases. Miscellaneous cases are used to track administrative matters through the judicial system. However, they may be directly or indirectly related to a regular case, such as: registration of judgments from another district; summons enforcement proceedings; or motions to compel or quash discovery based on a foreign deposition. Documents filed under a miscellaneous designation are reviewed for conformity with the Local and Federal Rules and are processed in the same manner as documents in a civil or criminal action.

Miscellaneous matters frequently are ancillary and supplementary proceedings. Because they are not defined as civil actions, the Clerk may not assign a civil number to them. If the matter pertains to a case already on file, the judge may opt to file the matter under the related case number in lieu of assigning a miscellaneous number.

A \$30.00 filing fee is assessed for each new miscellaneous matter.

Public Access to Docket Information

Civil Cases Filed Prior to July 1, 2002, and all Criminal Cases

The Clerk maintains the Court's civil and criminal docket information in an electronic database, referred to as JAMS (Judicial Automated Management System). Routine information is available through this system and hard copies can be generated. The complete electronic docket for civil actions filed after January 1, 1991, is available. Computer terminals to access JAMS are available in the Clerk's Office lobby in each Division.

Also, the public may access JAMS electronically via the Court's Internet Web page at: <http://www.insd.uscourts.gov>. The Case Search feature on the internet is updated each morning; thus information each day is not reflected in Case Search until the following business day.

Civil Cases Filed on or after July 1, 2002

On July 1, 2002, the Southern District of Indiana implemented a new electronic case filing and management system (CM/ECF) which is used for all civil cases filed on or after July 1, 2002. Docket information, as well as many documents (in PDF form) are available through the new system. A U.S. Courts PACER account is required to access information for these cases. To obtain a PACER account, please contact the PACER Service Center at: (800) 676-6856, or pacer.psc.uscourts.gov

Electronic Case Filing

In conjunction with the implementation of the new electronic case filing and case management system (CM/ECF) on July 1, 2002, registered attorneys can file documents electronically via the Internet. Detailed information can be found in the "Attorneys Administrative Policies and Procedures Manual" which is located on the Court's website - <http://www.insd.uscourts.gov> - in the "Electronic Case Filing" section.

Note that documents initiating a lawsuit must be filed, fees paid, and summons issued and served in the traditional manner (on paper) rather than electronically (Local Rule 5.6).

Copy Requests

a. Pending cases and cases closed within last three years

The Clerk's Office has contracted with IKON Legal Document Services to process requests for copies. All requests should be in writing, either on a form obtained by the Clerk's Office or by providing a letter to the Clerk's Office. The case number, name of case, title of document and its filing date and/or document number should be provided. Please include a daytime phone number so that IKON can contact you once the request is completed. Once completed, the copies will be available for pick-up from IKON Legal Document Services, 300 North Meridian Street, Suite 910, Indianapolis, Indiana 46280. Copies are 22 cents per page. Checks should be made payable to IKON Legal Document Services, to be tendered at the time of claiming the copies.

The Clerk's Office will continue to provide copies upon request. Clerk's Office policy requires that copy requests be made in writing, preferably with the requested documents designated on a copy of the docket sheet. Staff will determine the number of pages of the request and determine the cost, based on the rate of 50 cents per page. Staff will then call the requesting party with the cost of the copy work. The copy work will be completed within 24 to 48 hours after the Clerk's Office receives payment. Payment should be made in the form of a check, payable to Clerk, U.S. District Court. As an added convenience, the requesting party may pay for the copy work with a credit card. The party will need to submit, with the copy request, the make of the card, card number, expiration date and the name on the credit card. Telephone requests will be honored only in an emergency as determined by the Clerk, so please plan accordingly.

b. Cases closed more than three years

The files of cases closed more than three years are maintained by the Federal Records Center in Chicago, Illinois. A \$25.00 fee is assessed for retrieval of each of these files; requests and check or money order must be made in writing to the Clerk. A per-page copy charge is added to the retrieval fee. Ordinarily, the file is received from the Federal Records Center within two weeks after the request is mailed by the Clerk's Office to the Federal Records Center.

Filing of Documents Outside Normal Office Hours

The Clerk's Office in Indianapolis is open to the public between 8:30 a.m. and 5:00 p.m. daily except for Saturdays, Sundays and legal holidays.

When exigent circumstances exist and counsel need to file papers outside of normal working hours, advance contact should be made with the Operations Supervisor in the Clerk's Office during regular business hours. If the Operations Supervisor is unavailable, contact should be made with the Clerk of Court or Chief Deputy. Where a case is already pending, coordination with the assigned judicial officer's courtroom deputy clerk may be required. In any event, reasonable efforts will be made to accommodate extraordinary needs of this nature. The Clerk's Office will maintain a log of counsel and law firms that utilize after-hours filing accommodations. This log will be monitored to assess and assure that these procedures are being used only in appropriate circumstances, and after hours filing privileges may be modified accordingly.

For late filings other than in the Indianapolis Division, please contact the divisional deputy-in-charge.

The legal holidays prescribed by *Fed. R. Civ. P. 6(a)* are the following:

New Year's Day -- January 1
Birthday of Martin Luther King, Jr. -- 3rd Monday in January
Presidents' Day -- 3rd Monday in February
Memorial Day -- Last Monday in May
Independence Day -- July 4
Labor Day -- 1st Monday in September
Columbus Day -- 2nd Monday in October
Veterans' Day -- November 11
Thanksgiving Day -- 4th Thursday in November
Christmas Day -- December 25

When one of these legal holidays falls on Saturday or Sunday, the Clerk's Office is closed on the Friday immediately preceding or the Monday immediately following, respectively.

A LAWSUIT

Local Rule 5.1 contains information on general aspects of filing, which is worth repeating here:

Form, Style and Size of Papers. In order that the files of the Clerk's office may be kept under the system commonly known as "flat filing," all papers presented to the Clerk or Judge for filing shall be flat and unfolded. All filings shall be on white paper of good quality, 8 ½" x 11" in size, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double spaced, except for quoted material. The filings shall be either stapled in the top left corner or bound in a manner which permits the document to lie reasonably flat when open (e.g., spiral bound), and shall be two-hole punched at the top (but not fastened) (the punches shall be 2 ¾" apart and appropriately centered). Should the nature of the filing be so unusual as to make these methods of fastening infeasible, a party may seek leave of the Court to use a different method. Such leave shall be sought prior to the submission of any filing fastened in any way not conforming to this Rule. The title of each filing must be set out on the first page. Each page shall be numbered consecutively. Any filing containing four or more exhibits shall include a separate index identifying and briefly describing each exhibit.

S.D.Ind. L.R. 5.1(a). Documents not conforming to these requirements will not be rejected by the Clerk, but the Court may disregard them, order them stricken or order any defect corrected. Under no circumstances are documents to be delivered to chambers. A delivery to chambers is not deemed filed with the Clerk.

A motion or petition requiring the entry of a routine or uncontested order by the Judge or Clerk shall be accompanied by a suitable tendered form of order. There must be sufficient copies of the form of order for service upon all parties or their counsel. The names and addresses of all parties or their counsel must be typed in the lower left-hand corner of the tendered form of order.

The Clerk is not authorized to file papers received by facsimile transmission without specific authorization by the judge assigned to the case (or the motions judge), granted upon a finding of compelling circumstances warranting such method of filing. Whenever facsimile filing is permitted, a substitute copy that complies with Local Rule 5.1(a) shall be filed to replace the facsimile within seven (7) days.

Cross-references: Local Rule 5.1

Requirements for Filing a Civil Lawsuit

A chart outlining the *typical* developmental steps of a civil case as it proceeds through the Court is included in this *Handbook* as Appendix 1. Each case, however, presents its own variations. Three (3) items are necessary for the filing of a civil lawsuit:

1. Complaint;
2. Civil Cover sheet (signed and completed in full); and
3. Filing fee of \$150.00 or a request that the filing fee be waived.

Counsel and parties are strongly encouraged to present all new cases to the Clerk's Office before 4:30 p.m. for opening and processing. Initial pleadings presented after 4:30 will be "Filed" the day of presentment, but other processing may not be completed that day. Counsel may be required to return the following business day to retrieve completed paperwork.

The preferred method of demanding a jury trial is to set forth the demand on a separate document. However, it may also be noted in a prominent place on the document setting forth the claim for relief. Local Rule 38.1 mandates that "a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating 'Demand For Jury Trial' or an equivalent statement." In addition, the attorney must check the designated box on the Civil Cover Sheet. Forms providing "Notice of Consent to Magistrate Judge" are issued by the Clerk at the time of filing.

When papers are presented for filing, the Clerk retains only the original of each pleading or document. Each such pleading or document must be **signed by the attorney(s) of record**. An unsigned document or one containing only a rubber stamp or facsimile signature tendered for filing will not be refused, but the attorney who should have signed it may be contacted and expected to promptly cure the defect, pursuant to the requirements of *Fed. R. Civ. P.* 11. Procedures governing the **removal** of actions are discussed on later in this *Handbook* as are procedures for processing amended complaints.

A litigant without sufficient funds to prepay the filing fee may request the waiver of such requirement on forms available from the Clerk. If the request is granted, the Court will direct the issuance and service of process and may establish a schedule for payment of the filing. At the conclusion of an action in which prepayment of the filing fee was waived, the court may direct that the non-prevailing party pay any remaining portion of the filing fee still due.

Attorneys should take note of Local Rule 81.2 which requires that every nongovernmental party file a statement identifying its parent corporations and listing any publicly held company or investment fund that holds a 10% or more ownership interest in that party. The statement must be filed with the party's initial pleading or responsive motion, and

must be supplemented within a reasonable time of any change in the information.

Cross-references: 28 U.S.C. §§ 1914(b), 1915(a); *Fed. R. Civ. P.* 8(a); Local Rule 81.2, 38.1

Service of Process

The party asserting a claim for relief, whether through a complaint, a counter-claim or a cross-claim, bears the responsibility for properly notifying any adverse parties of the existence and nature of that claim. The traditional method by which this notice has been delivered is via a summons, although other methods are available in some circumstances.

At the time an action is commenced, the filing party may submit an original summons with the required number of copies needed for service. Alternatively, the party may utilize the notice and waiver provisions provided for in *Fed. R. Civ. P. 4(d)*. Regardless of which method is selected, the party on whom the burden rests has 120 days from the filing of the complaint (or cross-claim or counterclaim) in which to serve process on the adverse parties. *See Fed. R. Civ. P. 4(m)*.

a. Service by summons

The original and all copies of the summons are signed by a deputy clerk. The deputy clerk places one *copy* in the Court's file and returns the original and remaining copies to the attorney or pro se initiating party for service.

A party on whom a claim for relief and summons are served has twenty (20) days in which to file an answer or other responsive pleading, except that if service is made by mail the party has twenty-three (23) days. If the answering party is the United States or any federal government agency or official, however, the time within which to file a responsive pleading is 60 days. *See Fed. R. Civ. P. 12(a)*.

Under the present *Federal Rules of Civil Procedure*, a single summons may be prepared and issued for multiple defendants in the same case. Utilizing this procedure can result in considerable savings of time and paper.

A copy of the complaint (or other pleading in which a claim for relief is asserted) must be included with each summons being served.

Anyone 18 years of age or older who is not a party to the suit may serve the summons and complaint. A person specially appointed to serve process may also do so. The United States Marshal no longer serves summonses or other civil process except (1) on behalf of the United States, (2) on behalf of a person who has been granted leave to proceed *in forma pauperis*, (3) on behalf of a person authorized to proceed as a seaman under 28 U.S.C. § 1916, and (4) when otherwise ordered by the Court.

There are some categories of defendants not amenable to the waiver and notice provisions of Rule 4(d). Among these defendants are the United States and its agencies and

officers. To effect service in a case where the United States (or its agencies or officers) is a defendant, the responsible party must do the following: (1) deliver a copy of the complaint and summons on the United States Attorney General by registered or certified mail; and (2) deliver a copy of the complaint and summons to the United States Attorney for the district in which the action is brought (or to an assistant United States Attorney or designated clerical employee). These procedures are established in *Fed. R. Civ. P. 4(I)(1)*.

To effect service in a case in which an officer or agency of the United States is a defendant, the party responsible for serving process must do the following: (1) serve the United States in the manner just specified; and (2) serve a copy of the complaint and summons on the defendant officer or agency.

Service by publication should be undertaken only when authorized by the Court and then pursuant to the specific terms which are directed.

When a party seeks service of process by the Marshal, whether by summons or otherwise, counsel should submit to the Clerk in appropriate numbers the process to be served. In addition, counsel may be directed to fill out a Marshal's "Service of Process and Receipt" form. These forms, known as "285's," are available from the Clerk's Office or the Marshal. The party seeking service through the Marshal should keep informed of when service is made so that needless delay can be avoided.

When service of process is made via summons, the serving party must submit a return of service to establish when and how service was effected. This is done by placing the appropriate information on the back of the summons or preparing an affidavit reciting the same information. In either event, this proof of service must be filed with the Clerk.

b. Waiver provision of *Fed. R. Civ. P. 4(d)*

Under this procedure, a plaintiff mails a copy of the complaint and a request for waiver of service to those defendants listed in *Fed. R. Civ. P. 4(e)* (individuals within a judicial district of the United States), (f) (individuals in a foreign country) and (h) (corporations and associations). A document identified as "Form 1A" is the defendant's notice of the lawsuit, notice of the opportunity to waive formal service of summons and notice of the liability which may be incurred for the expenses of serving summons if the accompanying "Form 1B," the waiver of service of summons, is not executed and returned to the sender. The executed waiver is then filed with the Clerk in lieu of proof of service.

This procedure involves less formality and, typically, less expense than serving a summons. The trade-off built into Rule 4 is that the defendant has an extended period of time in which to respond to the complaint. The extended time is prescribed in *Fed. R. Civ. P. 12(a)(1)(B)*. In waiving service by summons a defendant "does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant." *Fed. R. Civ. P.*

4(d)(1).

As with a summons, a single Form 1A can be issued to multiple defendants, although each defendant must receive notice. To utilize this method, the complaint is sent with a Form 1A and Form 1B by first-class mail "or other reliable means" to the defendant. The notice must inform the defendant of (1) the possible consequences of failing to execute a waiver of service of summons, and (2) the date on which the request is sent. *Fed. R. Civ. P. 4(d)(2)(A)-(E)*. The defendant must also be allowed a reasonable time in which to return the waiver and be provided with an extra copy of the notice, as well as a prepaid means of compliance in writing. *Fed. R. Civ. P. 4(d)(2)(F)-(G)*.

This procedure is equally applicable to the manner in which service of process is effected on a counterclaim or cross-claim.

If the waiver provisions of *Fed. R. Civ. P. 4(d)* are followed, but a valid waiver is not secured, the party responsible for serving process may seek to recover costs subsequently incurred in effecting service through some other means. *Fed. R. Civ. P. 4(d)(2)*.

Cross-references: *Fed. R. Civ. P. 4*

Entry and Withdrawal of Appearance

The appearance and withdrawal of counsel are governed by Local Rule 83.7. The Clerk will accept, in lieu of an appearance on the prescribed form, an appearance comparable in format.

Any change of name or address should be communicated to the Court in writing and to all the parties.

For Civil Cases Filed Prior to July 1, 2002

A lawyer's appearance, when filed, places his or her name on the case distribution list to allow for notification by mail of rulings and other actions by the court. Where there are multiple attorneys appearing in the same case from the same firm, a designated "NOTICE" counsel will be placed first on the mailing list and only the "NOTICE" counsel's name will appear on the address label. All other counsel from the same firm should enter appearances and will be listed as attorneys of record, but their names will not appear on the mailing labels. Unless the Clerk is notified in writing that a different designation is requested, the attorney whose name first appears will be treated as "NOTICE" counsel. If the designated "NOTICE" counsel changes, please inform the Clerk's Office to allow designation of another attorney.

For Civil Cases Filed on or after July 1, 2002

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the Clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. If a party is represented by multiple attorneys from the same law firm, and one or more is a Filing User, notice of entry of an order or judgment in a case assigned to the Electronic Filing System will be transmitted only to the Filing User(s). Electronic transmission of the Notice of Electronic Filing constitutes the notice required by FED. R. CIV. P. 77(d). If a party is not represented by at least one attorney who is a Filing User, the Clerk will give notice in paper form in accordance with the Federal Rules of Civil Procedure.

Cross-reference: Local Rule 83.7 and Local Rule 5.12

Amended Complaints and Amendment of Other Pleadings

Pursuant to *Fed. R. Civ. P. 15(a)*,

(1) a party may amend its pleading "once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served"; and

(2) "otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party."

Notwithstanding the first of the foregoing statements, a new party may be brought into a case only with leave of court.

When an amended complaint (or other amended pleading) is submitted but not filed as of right under *Fed. R. Civ. P. 15(a)* or pursuant to court order, the following procedures should be observed:

1. A motion for leave to file an amended complaint is filed, accompanied by an original of the proposed amended complaint and one extra copy. A proposed Order granting the motion with sufficient copies for all parties must also be submitted.
2. If an order granting the motion is entered, the **original** of the amended complaint (offered with the motion) will be filed and docketed and the extra copy will be file-stamped and returned to the moving party for service on the other parties.

Cross-Reference: *Fed. R. Civ. P. 15(a)*
 Local Rule 15.1

Consent to Magistrate Judge

Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a)(1) and (2), and may exercise all the powers and duties conferred upon United States Magistrate Judges by statutes of the United States. Parties may consent to have a full-time Magistrate Judge conduct any or all proceedings in a jury or nonjury civil matter, including trial of the matter and entry of judgment.

The Court encourages attorneys and litigants to make full use of the Magistrate Judges, each of whom is highly experienced and well qualified to handle all aspects of civil litigation. Our Magistrate Judges are exceptionally well qualified to serve as trial judges. Collectively, they have presided over hundreds of jury and court trials. Though a consent does not preclude the originally assigned District Judge from conducting any or all proceedings in the case, including trial, in practice few matters are returned to the District Judge once the parties consent to proceed before a Magistrate Judge.

Consents pursuant to 28 U.S.C. § 636(c) must be made on the record and be unequivocal. The preferable procedure is for a consent to be in writing and signed by either the party or the party's counsel and filed with the Clerk. Forms for notice, consent, order of reference, and other related matters are available from the Clerk. Parties may file a joint consent or may file separate consents. There is no time limit within which a consent must be filed. **The consent of all parties is required in order to trigger the provisions of § 636(c), although the consents need not be filed simultaneously.** Ordinarily, the case will be referred to the Magistrate Judge who has been previously assigned to the case.

The consent procedure should not be confused with the issuance of an Order of Reference to a magistrate judge pertaining to specific motions or issues or for particular types of action pursuant to 28 U.S.C. § 636(b)(1)(A) and (B).

Cross-references: 28 U.S.C. § 636(b)
 28 U.S.C. § 636(c)
 Fed. R. Civ. P. 73
 Local Rule 72.1(a)
 Local Rule 72.1(h)

Pretrial Procedures

Counsel should refer to Local Rule 16.1 and the court's website (<http://www.insd.uscourts.gov/judges.htm>) for the details regarding pretrial procedures and the filing of case management plans. The court now uses a Uniform Case Management Plan, which is available on the court's website, as noted above, or by calling the Clerk's Office. Questions concerning any specifics of case management can be referred to the appropriate courtroom deputy clerk.

The Court relies on Local Rule 16.1 to facilitate the orderly and efficient management of cases. One of its principal policies is that counsel can and should conduct many phases of litigation without the direct involvement or supervision of the Court, thereby giving greater flexibility to the attorneys and their clients, as well as conserving judicial resources.

Very often the Court, in consonance with the case management plan in a particular case, will set a case for trial only one time. This deadline places significant responsibilities on counsel to adhere diligently to pretrial schedules.

The case management plan requires counsel to confer (preferably in person) and give thoughtful consideration to the merits and the amount of damages at issue in a case at the initial stages, rather than waiting until immediately before trial. The parties are then able to consider a realistic time frame and mechanisms for resolution of the dispute, whether through alternative dispute resolution or by the Court. The purposes of the plan cannot be fulfilled by merely exchanging a document in which the parties simply supply deadlines without any reasoned consideration of the difficulty of the issues in the case and the schedules of the parties.

Cross-references: Local Rule 16.1

Discovery

Because of the considerable cost to the parties in furnishing additional copies of discovery materials and the serious problems encountered with storage, the Court has directed, through Local Rule 26.2, that certain discovery materials not be filed with the Clerk.

Particular attention should be given to Local Rule 26.2(b) in this regard. That is, even as to the written discovery and depositions counsel anticipate utilizing at trial or in support of a dispositive motion, only the portions directly relevant to the resolution of the issues presented should be filed. For example, if only four pages of a deposition are necessary to support a motion for summary judgment, only those pages, excerpted from the whole, should be included as an exhibit supporting the motion.

Motions to publish depositions are not required under the Federal Rules of Civil Procedure or the court's local rules.

In furtherance of the policy of the court that discovery matters be conducted without the unnecessary intervention of the Court, counsel are required in most circumstances, before filing a motion pursuant to Rule 26(c) or Rule 37 of the Federal Rules of Civil Procedure to meet and confer with a goal of reaching agreement on the matter(s) set forth in the motion. An exception to this exists for (1) problems requiring and permitting immediate resolution during a deposition, (2) motions filed pursuant to Rule 26(c) of the *Fed. R. Civ. P.*, and (3) motions brought by a person appearing *pro se*.

Cross-references: *Fed. R. Civ. P.* 26
 Fed. R. Civ. P. 37
 Local Rule 26.2(b)
 Local Rule 37.1

JUDGMENT

Effective Date and Form of Judgment

A judgment is not final for purposes of *Fed. R. Civ. P.* 58 and 79 until it is entered on the docket by the Clerk. Appellate timetables and the accrual of post-judgment interest run from that date.

When tendering proposed forms of judgment, counsel should take care to comply in every respect with the separate document requirement of *Fed. R. Civ. P.* 58, specifying precisely what relief is awarded or not granted and as to which parties. A partial final judgment may be entered pursuant to *Fed. R. Civ. P.* 54(b) only when the specific criteria of that Rule are present and where the Court expressly directs the entry of a partial final judgment. Otherwise, a ruling which resolves less than all the claims against all the parties remains interlocutory.

Cross-references: *Fed. R. Civ. P.* 54(b), 58, 79

Bills of Costs

Forms for Bills of Costs are available from the Clerk's Office and on the Court's web site (www.insd.uscourts.gov). Parties are encouraged to utilize these forms.

A Bill of Costs is prepared by the prevailing party. The Bill of Costs should reflect all taxable costs incurred by that party, including the \$150.00 filing fee if the plaintiff is the prevailing party. Costs can only be taxed when there is a judgment. Costs cannot be taxed in a settled case unless it is a specific element of the settlement. *Do not include attorney fees in a Bill of Costs to the Clerk. Attorney fees must be requested by separate petition and supporting brief.* Also, only costs associated with proceedings in the District Court can be taxed by the District Court Clerk. Costs associated with an appeal are taxed by the Clerk of the Court of Appeals pursuant to *Fed. R. App. P. 39*.

SPECIAL NOTE: **Attach to your Bill of Costs an itemization and documentation (receipts, invoices, etc.) for requested costs in each category. Costs will not be taxed without documentation.**

Please note that "taxing" costs consists only of signing and sealing a filed Bill of Costs and docketing it in the case record. Generally, the Clerk will tax any costs substantiated by itemization and affidavit of counsel. If the opposing party has objections as to a particular item, those objections should be made in writing to the Court and filed with the Clerk. The Clerk is not responsible for collecting or assisting in the collection of these costs. Conformed copies are distributed to the parties of record.

Local Rule 54.1 provides that parties have a period of fourteen (14) days from the entry of a final judgment in which to file and serve a Bill of Costs and a motion for the assessment of attorney fees. The Court prefers that any Bill of Costs be filed on AO form 133, which is available from the Clerk and on the Court's web site.

Cross-Reference: 28 U.S.C. § 1920
 Fed. R. Civ. P. 54(d)
 Local Rule 54.1

Default Judgments

A default may be entered when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within 20 days (60 days for the United States) following service. **Proof of adequate service must be on file with the Clerk.** It may also be entered where a defendant has waived service of summons under *Fed. R. Civ. P. 4(d)* but has not responded within the applicable time period under that Rule. Before a default judgment can be entered, an entry of default must be made against the party by the Clerk. It should be noted, however, that attorney fees and special damages can only be awarded by the Court.

Entry of Default

The first step in securing a default is to apply to the Clerk for the entry of default. *Fed. R. Civ. P. 55(a)*. The party seeking entry of default should tender an appropriate entry for the Clerk's signature. See Appendix 4.

Default Judgment

By the Clerk. When seeking a default judgment for a sum certain or for a sum which can by computation be made certain (*e.g.*, suit on a note, on open account), such request should be supported by an affidavit setting forth that the party to be defaulted is not an infant, an incompetent person, nor in military service; that the default is for failure to appear; and that the disbursements, if any, sought to be taxed as costs have been or must be made in the action.

By the Court. In all other cases where a default judgment is sought, the party seeking the default judgment must apply to the court for relief. *Fed. R. Civ. P. 55(b)(2)*.

Cross-references: *Fed. R. Civ. P. 55*

Collection of Judgment

The procedure for executions and proceedings supplemental in the District Court adopts the remedies and procedures governed by the Indiana Trial Rules, except where those remedies or procedures conflict with federal statute.

a. Writ of Execution

The first step toward collection of a judgment is the issuance of a writ of execution. The writ is completed by counsel and issued by the Clerk consistent with the following procedures:

- (a) Prepare writ of execution - (obtain blank writs and Marshal 285 instruction sheets from Clerk's Office).
- (b) Contact Marshal's Office for return date for inclusion on writ.
- (c) File Praecipe for writ of execution with District Court.
- (d) Obtain writ directed to U.S. Marshal for service and execution.

b. Proceedings Supplemental to Judgment

If a writ of execution is returned unsatisfied, or if there are no assets on which execution can be had, the judgment creditor may request proceedings supplemental to judgment to discover and attach assets, income or other property to satisfy the judgment. The motion for proceedings supplemental shall be automatically referred to the Magistrate Judge originally assigned to the cause.

All documents relating to proceedings supplemental shall be filed under the same cause number as the original action. A judgment obtained in another district and registered in this district is assigned a miscellaneous number and shall be subject to the filing fee applicable to miscellaneous matters. Upon the commencement of proceedings supplemental on a foreign judgment registered in this district, the action is assigned a civil cause number and shall be subject to the filing fee applicable to civil actions, and all papers in the miscellaneous file shall then be transferred to the civil action file.

c. Judgment Obtained in this District

- (1) A writ of execution ordinarily will be issued and returned unsatisfied; however, if the motion for proceedings supplemental states "that the plaintiff has no cause to believe that levy of execution against the defendant will satisfy the judgment," a writ does not have to be issued prior to proceeding supplemental.
- (2) The motion for proceedings supplemental must be filed under the same cause number as the original action.

d. Judgment Obtained in Another District (*Foreign Judgment*)

A judgment for registration in another district, pursuant to 28 U.S.C. § 1963, is "a judgment in an action for the recovery of money or property now or hereafter entered in any district which has become final by appeal or expiration of time for appeal"

To commence an action for proceedings supplemental based on a judgment entered in another district, the judgment creditor should obtain a certification of judgment for registration in another district (Form AO 451) with a certified copy of the judgment attached. This step is taken through the Court in which the judgment was entered.

Then, *in this District Court*, the foreign judgment is registered by being docketed as a miscellaneous case, along with the \$30.00 filing fee. (This is the point at which a writ of execution will issue.)

If the judgment creditor seeks to commence proceedings supplemental in this District based on the registered foreign judgment, the motion is presented and treated as a new civil case, the \$150.00 is paid, and all papers in the miscellaneous file are transferred to the civil file.

APPEALS

General

Most appeals from a decision of the District Court proceed to the U.S. Court of Appeals for the Seventh Circuit in Chicago. A chart showing the typical cycle of an appeal is included as Appendix 2 to this *Handbook*.

The notice of appeal is filed with the Clerk of the District Court. Pursuant to Appellate Rule 10(a), the Clerk notifies all parties that a notice of appeal has been filed. A **SHORT RECORD** on appeal is immediately forwarded to the Court of Appeals. The short record consists of a copy of the docket, the notice of appeal, the appellant's docketing statement and the judgment or order from which an appeal is being taken, including any explanatory Entry.

A notice of appeal should be accompanied by the following:

- 1. Docketing Statement (filed with the District Court Clerk); and**
- 2. Filing fee of \$105.00 (docketing fee of \$5.00 and appeal fee of \$100.00).**

A notice of appeal must conform with the requirements of Appellate Rule 3(c). It should be signed and dated and **must** include the names of **all** parties seeking to appeal. The use of "et al.," "plaintiffs" or similar abbreviations will **not** be effective or sufficient for anyone not actually named. It must also include a designation of the judgment, order or part thereof from which the appeal is taken.

To expedite the processing of each appeal, attorneys should familiarize themselves with Circuit Rules 3, 10, 11 and 45. These rules specify the filing fees, time for filing, preparation and transmission of the record on appeal. Circuit Rule 3(c), for example, requires the appellant to file a docketing statement in the district court with the notice of appeal, or in the Court of Appeals within seven (7) days of the filing of the notice of appeal. Other rules of particular importance are found in *Fed. R. Civ. P.* 54(b), 59(e) and 60(b), as well as 28 U.S.C. §§ 1291 and 1292. Appellate Rule 4(a) governs the time within which a notice of appeal must be filed.

Inquiries regarding the status of a case on appeal ordinarily cannot be answered by the District Court Clerk because we do not have immediate access to such information. The Court of Appeals maintains a computer bulletin board, from which docket sheets can be accessed. Counsel may access this by phoning 312-435-5560.

Counsel should keep in mind that documents under seal in the District Court are not necessarily kept under seal at the Court of Appeals. The Seventh Circuit Operating Procedures

(available at www.ca7.uscourts.gov) give more detail. In pertinent part, Procedure 10 is:

10. Sealing Portions of the Record

(a) Requirement of Judicial Approval. Except to the extent portions of the record are required to be sealed by statute (e.g., 18 U.S.C. §3509(d)) or a rule of procedure (e.g., Fed. R. Crim. P. 6(e), Circuit Rule 26.1(b)), every document filed in or by this court (whether or not the document was sealed in the district court) is in the public record unless a judge of this court orders it to be sealed.

(b) Delay in Disclosure. Documents sealed in the district court will be maintained under seal in this court for 14 days, to afford time to request the approval required by section (a) of this procedure.

(This is the Procedure as of December 1, 2001. Please be sure to check the Seventh Circuit's website to be sure you are aware of the most current version.)

Further guidance regarding the conduct of appeals may be found in the very useful Seventh Circuit's *Practitioner's Handbook for Appeals* which is available on the web site of the Seventh Circuit Court of Appeals (www.ca7.uscourts.gov).

Designation of Record

Local Rule 76.1 provides a mechanism for the *joint* designation of items to be included in the record on appeal pursuant to Circuit Rule 10(a). Circuit Rule 10 specifically outlines what will *not* be included in the Record on Appeal. Counsel should closely review the Circuit Rules so that any designation filed in the District Court is compliant with Circuit guidelines.

The Court of Appeals will inform the District Court when the complete record should be sent to that Court. Usually, a request for the record on appeal will be sent to the District Court three to four weeks before oral argument

If at some point the appellant requests dismissal of an appeal, please provide the Clerk with a copy of the dismissal or call the Appeals Deputy with that information. Depending on what record preparation has already occurred, it could avoid unnecessary expense, time and effort in preparation of the record.

Counsel is responsible for making arrangements with the court reporter for the preparation and filing of transcripts.

Withdrawal of Record on Appeal

It is the Clerk's policy ordinarily to permit attorneys of record to withdraw a record on appeal by giving the Clerk a written receipt. Please call the Appeals Deputy at (317) 229-3918 to arrange for withdrawal of appeal records from the Indianapolis Division. The record must be returned to the Clerk not later than 10 days from the date of withdrawal. Original trial exhibits may not be removed from the Clerk's custody, but may be reviewed at the Clerk's Office.

A party not represented by counsel may examine the record during the normal office hours or under other arrangements upon order of the Court.

Remember:

1. Attorneys Must Sign a Receipt for the Record
2. Withdrawal Period Expires In 10 Days
3. Exhibits May Be Reviewed Only In Clerk's Office

PLEASE GIVE THE APPEALS DEPUTY CLERK AT LEAST FIVE (5) DAYS NOTICE PRIOR TO THE TIME THE RECORD IS NEEDED.

Cross-references: 28 U.S.C. §§ 1913, 1917
 28 U.S.C. §§ 1291, 1292
 Fed. R. App. P. 3, 4(a)
 Local Rule 76.1

COURT PROCEDURES

Bar Admission

Admission to the Bar of this District Court is governed by Local Rule 83.5(b). An attorney may be admitted based upon his or her admission to practice before the Supreme Court of the United States or the highest court of any state, upon the Court's being satisfied with the attorney's private and professional character, upon the admittee's taking of the prescribed oath or affirmation, and upon the tendering of the fee for admission.

Public admission ceremonies are held in conjunction with those of the State of Indiana. They presently occur twice each year. Admission as a participant in one of these groups is governed by the procedures and information supplied in advance to the admittees.

An attorney may also seek admission on an individual basis, in which case the prospective admittee should make the necessary arrangements by contacting Libby Cheema at 317-229-3700 in Indianapolis, Susan Doninger, Deputy-in-Charge, in Evansville or any deputy clerk in New Albany or Terre Haute.

Whether admitted as part of a public bar admission ceremony or individually, a \$60.00 fee is payable at the time of an attorney's admission. Following the taking of the oath, the Clerk will issue the admittee a certificate of admission.

The Court has adopted the Seventh Circuit's *Standards on Civility* with respect to the conduct of attorneys. Admission to its Bar constitutes an acknowledgment both of counsel's familiarity with these standards and an agreement to abide by them.

A certificate of good standing as a member of the Bar is available upon request and payment of a \$15.00 fee.

Admission *pro hac vice* may be sought upon written motion accompanied by the \$30.00 fee, and supported by the movant's affidavit that he or she is admitted to practice before the highest court of the jurisdiction in which he or she customarily practices and is not currently under suspension or other disciplinary action with respect to his or her practice. If a request for such admission is granted, the attorney must file a separate appearance.

The Court may require any attorney who resides outside this district to retain as local counsel a member of the Bar of this Court who is a resident of this district. Attorneys admitted to practice are entitled to use the U.S. Court's Library, located in Room B-12 of the Courthouse in Indianapolis. The Library's hours are from 8:30 a.m. to 4:30 p.m. Monday-Friday. Monica

Collins is the librarian and may be contacted at (317) 229-3925. The Library has a photocopy machine.

Cross-references: Local Rule 83.5

Attorney Discipline

The Court has adopted the *Rules of Professional Conduct*, as formulated by the Indiana Supreme Court, as the standards for professional conduct of attorneys.

Attorney discipline is governed by the Court's *Local Rules of Disciplinary Enforcement*. In general, the Court adheres to a reciprocal discipline policy with the State of Indiana. If an attorney is disciplined by the Indiana Supreme Court, the District Court, upon receiving notification by the Supreme Court, will issue an order directing the attorney to show cause why the same discipline should not be imposed by this Court. If there is no response, the Court ordinarily imposes discipline identical to that imposed by the Indiana Supreme Court. It may, however, enter any other appropriate order.

Cross-references: Local Rule 83.5
 Local Rules of Disciplinary Enforcement

Civil Legal Assistance Panel

In response to situations where counsel is not available to litigants through traditional means, the Court has created a civil legal assistance panel. Attorneys within each Division may notify the Clerk in writing of their willingness to serve on this panel. Although the term, "appointment of counsel" is often used in this context, in reality the Court requests the voluntary assistance of counsel to serve on behalf of a previously unrepresented party. This usually occurs after a case has passed through the preliminary stages and the Court finds reason to believe that the litigant in search of counsel has a meritorious case. Recovery of attorney fees in certain cases is available by statute if the litigant is the prevailing party, *see e.g.*, 42 U.S.C. § 1988. Fees may also be recovered through a contingency contract with the litigant and may be waived in the case of *pro bono* representation.

Local Rule 4.6 sets out detailed procedures for the requesting of counsel in civil cases. The requests are generally, but not always, made of attorneys who have indicated a willingness to serve on the civil legal assistance panel. Attorneys will be contacted by a court representative if their representation is requested. Nothing in Local Rule 4.6 prohibits an attorney accepting a request for representation from negotiating or entering a voluntary fee arrangement with the litigant.

Appearances in response to a request to appear under Local Rule 4.6 are not funded through the Criminal Justice Act or from any other public funds. However, Local Rule 4.6 provides that reimbursement up to \$500.00 is available for itemized copy, mail, telephone, travel, and expert witness expenses. At the discretion of the assigned Judge on a case-by-case basis, reimbursement of itemized expenses may be made up to \$1000.00. Reimbursements for deposition or other discovery expenses are generally not available, absent specific prior authorization from the Court.

When an attorney who has been requested to appear under Local Rule 4.6 is unable to continue representation of the client, counsel must withdraw in a manner consistent with the procedures of Local Rule 4.6. The Court acknowledges the sacrifice made by attorneys who agree to serve on the civil legal assistance panel, and the Clerk will make every effort to cooperate with them. The Court also applauds the Bar's demonstrated, strong commitment to providing competent legal services to those unable to pay for these services. Thus requested appearance under Local Rule 4.6 is viewed as a service to the Court and the public. A form for membership in the civil legal assistance panel may be found at Appendix 10 and are also available from the Clerk's Office in each Division. Participation in the civil legal assistance panel is encouraged.

Cross-references: 28 U.S.C. § 1915(d); Local Rule 4.6, Local Rule 83.7

Emergency Matters; Motions Judge

a. Requests for Temporary Restraining Order or Preliminary Injunction

Requests for preliminary injunction or temporary restraining order are governed by *Fed. R. Civ. P. 65* and Local Rule 65.2. The Court will only consider a request for preliminary injunction or for a temporary restraining order when the moving party files a **separate motion** for such relief. A motion for temporary restraining order must comply with all requirements of *Federal Rule of Civil Procedure 65(b)*, and must be filed with a supporting brief.

Such motions are presented to the Court immediately upon filing. The Court, however, expects that every reasonable effort has been made to reach an accord with opposing counsel on the issues advanced in the motions before relief in the form of these extraordinary remedies is sought. Once such a request is made counsel should coordinate the scheduling and other aspects

of a hearing or conference with the assigned Judge's courtroom deputy clerk.

b. Emergency Matters and Motions Judge

Jurisdiction over any specific action is vested in the Court, not in individual judges. Nonetheless, civil, criminal and miscellaneous cases are assigned to particular judicial officers to facilitate their orderly process and resolution. When the assigned judge is not available to act on a matter requiring an immediate ruling, a Motions Judge is available in each Division for that purpose. The calendar reflecting assignments of Motions Judge duties is available from the Clerk in each Division.

Cross-references: *Fed. R. Civ. P. 65*
 Local Rule 65.2

Motions Practice

a. In General

Counsel should be aware of the Local Rules regarding motions practice (Local Rule 56.1 for summary judgment motions and Local Rule 7.1 for other motions), including the requirement of filing a separate supporting brief, and the requirements of Local Rule 5.1(a). When a party filing a motion has contacted the opposing parties, a practice which is encouraged, and there is no objection to the relief sought in the motion, that fact should be recited in the motion.

With the advent of electronic docketing, the clear identification in the title of motions and supporting documents is essential for accurate docketing. Several aspects of motions practice are particularly crucial and thus should be carefully observed:

1. Each motion, unless submitted in the alternative, must be on a separate document.
2. Supporting briefs must be designated as supporting or opposing a specific (named) motion or petition.
3. Documents already part of the Court's file should be discussed by reference rather than re-submitted with a motion or brief.
4. Notwithstanding the precision of labeling shown below, brevity and clarity in labeling and composing documents for filing are highly valued.

For example, a motion and supporting brief could be entitled:

CROSS-CLAIM DEFENDANT XYZ's RESPONSE
TO CROSS-CLAIM PLAINTIFF
ABC'S MOTION FOR JUDGMENT ON THE PLEADINGS

CROSS-CLAIM DEFENDANT XYZ's
BRIEF IN SUPPORT OF OPPOSITION TO CROSS-CLAIM
PLAINTIFF ABC'S MOTION FOR JUDGMENT ON THE PLEADINGS

DEFENDANT'S MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS OR,
IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

Additional examples of this very important practice are found in Appendix 8 to this *Handbook*.

b. Ripeness of Motions for Ruling and Requests for Oral Arguments

A motion will be deemed ripe for ruling upon the passage of the applicable time for response and reply as provided in Local Rule 56.1 for motions for summary judgment and Local Rule 7.1 for other motions. Except for summary judgment motions, which are governed by Local Rule 56.1, those periods, subject to modification upon application by a party, are 15 days in which to respond and 7 additional days in which to reply. Three (3) additional days are provided if the motion or previous matter to which a response or reply is being submitted was served by mail.

A request for oral argument or an evidentiary hearing on a motion should be submitted separate from the motion itself. Any such request should include a statement of the specific purpose or reason for the request and an estimate of the time reasonably required for the Court to devote to the argument or hearing. Oral arguments on motions are generally not held.

c. Local Rule 56.1 - Motions for Summary Judgment

The requirements and operation of Local Rule 56.1 are of vital importance to both the Court and counsel. Local Rule 56.1 establishes the briefing period for a summary judgment motion--an adverse party has thirty (30) days after service of the initial brief in which to serve and file an answer brief and the moving party has fifteen (15) days after service of the answer brief in which to serve and file a reply brief. Local Rule 56.1 also prescribes specific additional steps which are to be followed. These steps include:

- First, the moving party must serve and file the motion and a supporting brief and any evidence not already in the record upon which the party is relying. The brief must include a section labeled "Statement of Material Facts Not in Dispute" containing the facts potentially determinative of the motion as to which the moving party contends there is no genuine issue. These asserted material facts shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or contained in an appendix to the brief. Such citation shall be by page or paragraph number or similar specific reference, if possible; this citation form applies to all briefs filed under this rule.
- Second, any party opposing the motion has 30 days after service of the motion to serve and file a supporting brief and any evidence not already in the record upon which the party relies. The brief must include a section labeled "Statement of Material Facts in Dispute" which responds to the movant's asserted material facts by identifying the potentially determinative facts and factual disputes which the nonmoving party contends demonstrate that there is a dispute of fact precluding summary judgment. These facts shall be supported by appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or contained in an appendix to the brief.

- Third, the party who initially moved for summary judgment may file a reply brief no later than 15 days after service of the opposing party's submissions.
- Fourth, if, in reply, the moving party relied upon evidence not previously cited or objected to the admissibility of the non-moving party's evidence, the non-moving party may file a surreply brief *limited to such new evidence and objections*, no later than seven days after service of the reply brief.
- Collateral motions, such as motions to strike, are strongly discouraged.

Factual assertions made during the summary judgment process have significant effect:

For purposes of deciding the motion for summary judgment, the Court will assume that the facts as claimed and supported by admissible evidence by the moving party are admitted to exist without controversy, except to the extent that such facts: are specifically controverted in the opposing party's "Statement of Material Facts in Dispute" by admissible evidence; are shown not to be supported by admissible evidence; or, alone, or in conjunction with other admissible evidence, allow reasonable inferences to be drawn in the opposing party's favor which preclude summary judgment. The Court will also assume for purposes of deciding the motion that any facts asserted by the opposing party are true to the extent they are supported by admissible evidence. The parties may stipulate to facts in the summary judgment process, and may state that their stipulations are entered only for the purpose of the motion for summary judgment and are not intended to be otherwise binding. (Local Rule 56.1(e))

Cross-references: Local Rule 7.1
 Local Rule 56.1

Procedures for Filing Notice of Removal

When a civil case is removed from a state court to this court, some of the basic requirements for filing an original civil lawsuit apply, *e.g.*, a \$150.00 filing fee must be paid and a civil cover sheet completed.

In addition, the following guidelines should be observed:

- 1) The caption of the notice of removal must be the same as the caption of the original complaint filed in the state court. All parties must be listed in the caption of the case. The use of "*et al.*" is not acceptable.
- 2) Copies of all state court papers, excluding discovery matters, should be attached to or included with the notice of removal. (If the state court papers are too voluminous to attach to the notice of removal, the party filing the notice of removal shall punch two holes at the top and place them in a fastener.)
- 3) Exhibits to pleadings must be stapled or bound.
- 4) Copies of the notice of removal must be served on all parties and on the state court clerk.

Counsel filing a notice of removal should be alert to the requirements of Local Rule 81.1, which requires in certain circumstances that the party filing the notice of removal certify that the amount of damages at issue satisfies the jurisdictional amount of 28 U.S.C. § 1332(a). In those circumstances the plaintiff is required to amend the complaint to comply with the jurisdictional amount requirements within thirty (30) days, if the case is not remanded.

Cross-references: 28 U.S.C. § 1332(a)
 Local Rule 81.1

Custodian of Files/Exhibits

Court Files

The Clerk is the custodian of the Court's files. A request to review a file or any part thereof should be made to the Clerk's Office.

Leave of Court is required to remove any record not on appeal.

Exhibits

Non-trial exhibits. Exhibits attached to a document should be marked. *Exhibits offered in support of or in opposition to a particular motion should be attached to the motion and numbered and indexed consistent with Local Rule 5.1 (a)* ("Any paper presented to the Clerk for filing which contains four or more exhibits shall include a separate index identifying and briefly describing each exhibit.") Exhibits too large to be attached to a motion should be presented separately with a cover page bearing the caption of the action and identifying the material.

Trial exhibits. Unless the Court directs otherwise, after an item is offered for identification as an exhibit or demonstrative evidence, it remains with the Clerk until the action is closed, whether or not it actually becomes a trial exhibit. A case is closed on the date the final judgment or the mandate from the Court of Appeals (in the case of an affirmance) is docketed, whichever occurs later.

Unless other arrangements are made, the party who offered an exhibit has ninety (90) days after the case is closed to retrieve it from the Clerk. An appropriate receipt is given to the Clerk and filed at the time of retrieval. If an exhibit is not retrieved in accordance with this procedure, the Clerk will issue notice to the offering party. If the exhibit remains unclaimed for another thirty (30) days, it may be sold or otherwise disposed of as the Court orders. The proceeds from any such sale are deposited with the registry of the Court.

Weapons and exhibits consisting of contraband are not retained by the Clerk. Items of this nature are released to the investigating agency at the conclusion of trial or otherwise handled as the Court directs.

Cross-Reference: Local Rule 79.1
 Local Rule 5.1

Courtroom Deputy Clerks

Each judge has an assigned courtroom deputy clerk (CRD). The duties of the CRDs vary somewhat. However, in general, the CRD is appropriately viewed as the administrative assistant to the judicial officer. For instance, the CRDs manage and schedule the cases assigned to the judicial officers and conform and cause to be distributed all of the Court's orders and entries. It can be of great benefit to you to direct questions to the CRD concerning a particular judge's preference as to procedure, decorum, schedule and so forth.

In Court

Each judicial officer has specific, individual requirements of decorum and procedure in the courtroom. In general, all Judges and Magistrate Judges require the following:

1. Punctuality;
2. Premarked exhibits (exhibit and witness lists should be provided to court, court reporter and the courtroom deputy clerk);
3. Witnesses present and ready to testify;
4. Your own presentation devices, such as video players, projectors and screens, easels, x-ray viewers, etc.;
5. Advance formulation, if possible, of all objections to witnesses, exhibits, etc.

Please note that the Indianapolis and Evansville courthouses have video evidence presentation systems ("VEPS") that can assist with and enhance the presentation of many types of media. For more information, contact the assigned courtroom deputy clerk or the System's Helpdesk at (317) 229-3737. Please confer with the assigned courtroom deputy clerk before the scheduled proceeding to ensure that your presentation will be handled in the most efficient, effective, and productive manner. Any specific questions concerning the handling of exhibits, witnesses, jury, etc., may be answered by the courtroom deputy clerk.

The Official Record

Prior to the commencement of protracted and/or technical trials, attorneys should supply the court reporter with copies of witness and exhibit lists and a glossary of technical terms which may be utilized during the course of the proceeding.

When delivering oral arguments which include case or statutory cites, complete and full citations should be provided, including case name, source, volume, and page number.

Bankruptcy Matters in District Court

Matters arising under Title 11 of the United States Code are presented to the Bankruptcy Court, which routinely adjudicates the issues presented. This reference has been made pursuant to 28 U.S.C. § 157(a).

a. Appeals

The District Court's jurisdiction over appeals from decisions of the Bankruptcy Court is created by 28 U.S.C. § 158(a).

The notice of appeal of a ruling of a Bankruptcy Judge must be filed in the Bankruptcy Court, along with the filing fee payable to the Bankruptcy Clerk. The Bankruptcy Clerk will transmit the record to the District Court, where it will be assigned to a judge by random draw, and given a District Court case number.

Motions for stay pending appeal of Bankruptcy Court orders are filed with the Bankruptcy Court and then transmitted to the District Court Clerk, who assigns the motion a civil case number. When an appeal is later transmitted to the District Court, it is assigned the same case number as the previously filed motion for stay.

A motion for leave to appeal an interlocutory order or decree of the Bankruptcy Court is also filed with the Bankruptcy Court and, if granted, is transmitted to the District Court Clerk, who assigns the motion a civil cause number. When the bankruptcy appeal is transmitted to the District Court, it is assigned the same cause number.

A notice of related action must be filed if there have been any other appeals previously filed, whether arising out of an adversary action or otherwise, stemming from that same underlying bankruptcy proceeding. This is the case even if there is no factual overlap in the appeals.

b. Withdrawal of Reference

In matters in which a statute provides for trial before a District Judge, counsel may request that the case be heard in District Court. If such action occurs, the following procedures apply:

1. The application or motion should be filed with the Bankruptcy Court, which in turn will transmit it to the District Court.
2. A cause number will be assigned and a District Judge will be chosen by random draw to rule on the application.
3. If the District Court grants the motion to withdraw the reference, the case will be heard in District Court in the usual manner.

For more specific instructions regarding the Bankruptcy Court, contact the Clerk of the Bankruptcy Court at 229-3800.

Cross-references: 28 U.S.C. §§ 157, 158; *Fed. R. Bankr. P.* 5011, 8001, 8003, 8005; Local Rule 40.1(e)

FINANCIAL

Fees and Costs Payable to the Clerk

A schedule of fees is included in this *Handbook* as Appendix 5. Fees are generally set by statute or by the Judicial Conference of the United States, but are in some cases set by each District Court.

Any fee or cost payable to the Clerk may be tendered through cash, check (including personal check), money order or credit card (VISA or Mastercard only). When a negotiable instrument is used, the payee should be: "Clerk, U.S. District Court." Questions on such use should be directed to the financial deputies at (317) 229-3745.

Post Judgment Interest Rates

Interest on judgments entered in the District Court are determined pursuant to 28 U.S.C. § 1961(a).

This statute provides that interest is "calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment. "

Current and past rates are available from the financial section at (317) 229-3745 or on the internet at: <http://www.federalreserve.gov/releases/H15/current/h15.pdf> (Note: from the web site, utilize the "1-Year" weekly average interest rate under "Treasury Constant Maturities 11". The correct rate to use is for the "Week Ending" the previous Friday, effective the following Monday for that upcoming week. The weekly average 1-year constant maturity yield rate changes are posted to this web page every Monday after 4:00 p.m. EST. (If Monday falls on a holiday, then it is posted on Tuesday.)

Cross-references: *Fed. R. Civ. P.* 55

Investment and Withdrawal of Funds Placed in the Court's Registry Account; Registry Fees

a. Investment and Payment of Funds

Money paid into the Court is governed by 28 U.S.C. § 2041.

Money paid out by the Court is governed by 28 U.S.C. § 2042.

Pursuant to Rule 67 of the Federal Rules of Civil Procedure, the Clerk maintains a Registry Account. Parties depositing money into the Court may petition the Court for an Order of Investment directing the Clerk to hold the funds during the pendency of an action. Any such petition, together with a proposed order, should specify:

- (1) the exact amount to be invested;
- (2) a statement that the deposit should be made in an interest bearing account;
- (3) a statement that upon closing the account the Clerk will deduct a fee not to exceed 10% of earned income (see Section b. below);
- (4) the type of instrument or account (*i.e.* money market account);
- (5) the name of the FDIC insured financial institution where deposit should be made; and
- (6) the term of investment, if applicable.

For guidance in preparation of petition and proposed order, you may contact the Court's Financial Manager, Richard Krall, at 317-229-3918.

The Clerk is not required to invest the following types of funds:

- (1) cash bail;
- (2) cost bonds, other cash bonds such as removal, admiralty, and injunction bonds;
- (3) civil garnishments;
- (4) proceeds from sales of property;
- (5) escrows from land condemnation;
- (6) admiralty sales proceeds;
- (7) supplemental rules for certain admiralty and maritime claims; and
- (8) any monies believed to be disbursed from the Registry within 30 days from receipt.

b. Registry Fees Funds on deposit in the interest-bearing Registry Account are assessed a fee not to exceed ten (10) percent of the interest income earned regardless of the nature of the case underlying the investment. This fee is established by the Judicial Conference of the United States

under the authority of 28 U.S.C. §§ 1913, 1914 and 1930 and is collected by the Clerk when funds are disbursed by order of the Court.

Security for Costs

The Court may order any party to file an original bond for costs or additional security for costs in such an amount and so conditioned as may be designated.

a. In lieu of the filing of a bond, the party required to file the bond may deposit with the Clerk the amount of the bond in cash. This amount will be held by the Clerk until subject to whatever order or use the Court makes. That deposit may be used by the Clerk to pay all fees, costs and disbursements which the parties making the deposit may ultimately be required to pay.

b. A bond or other commercial assurance in any case except in bankruptcy or criminal cases or as otherwise prescribed by law is sufficient if executed by the surety or sureties only.

Except as otherwise provided by law, every bond or undertaking must (1) be secured by the deposit of cash or negotiable securities issued by the United States of America in the amount of the bond or undertaking, (2) be secured by the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury or (3) be secured by the undertaking or guaranty of two individuals, residents of Indiana, each of whom owns real property within such district worth double the amount of the bond or undertaking over all his/her debts and liabilities and over all obligations assumed by him/her on other bonds or undertakings and exclusive of all legal exceptions. A husband and wife may act as sureties on a bond, but they are considered as only one surety on jointly owned property.

In the case of a bond or undertaking executed by individual sureties, each surety is to attach his/her affidavit of justification, giving his full name, occupation, residence and business addresses and showing that he is qualified as an individual surety as outlined above.

Members of the Bar, administrative officers or employees of the Court, the Marshal and his deputies or assistants may not act as surety in any proceeding in the Court.

If costs are awarded by the Court, the reasonable premium or expense paid on all bonds or other security given by the prevailing party may be taxed as part of the costs.

MISCELLANEOUS

Filing by Mail in Federal Court

Papers are deemed filed on the date received by the Clerk, unless otherwise ordered by the Court.

Indiana Trial Rule 5(E) recognizes the "filing" of documents to occur upon mailing by certified or registered mail. There is no comparable provision in the *Federal Rules of Civil Procedure* or the Local Rules. An exception to this may exist in the case involving an incarcerated *pro se* litigant. See, e.g., *Fed. R. App. P. 4(c)*.

Transfer and Reassignment of a Case

a. Related Cases--Transfer - Cases may be transferred from one judge to another judge when it is determined that a later-numbered case is related to a pending earlier-numbered case assigned to another judge. The concept of "related" in this sense is defined in Local Rule 40.1(d) as cases growing out of the same transaction or occurrence, involving the same property or involving the validity or infringement of a patent, trademark or copyright already involved in pending litigation. All counsel in a case have a continuing duty to promptly file a "notice of related action" where there is at least reason to believe this may be the case.

The filing of a notice of related case does not automatically effect the consolidation of the cases which could be affected by the notice. Upon filing the notice of related case(s), the Clerk will bring such cases to the attention of the judge who has been assigned to each case; if that judge determines that the cases are sufficiently related, the judge having been assigned to the earliest filed case determines whether he or she will accept reassignment of the related case.

b. Consolidated Cases - *Fed. R. Civ. P.* 42(a) permits the consolidation of actions involving a common question of law or fact. This may be for trial or for any other purpose, including discovery.

Cases which are consolidated may be merged into a single case or may retain their separate identities. Effective management will dictate how this aspect is handled, just as it will dictate whether consolidated cases are transferred to a single judge.

c. Reassignment of a Case after Remand or Disqualification - Ordinarily, reversal after trial results in the application of Circuit Rule 36. That is, the case is reassigned to a different Judge for retrial. Two exceptions to this exist where (1) the remand order directs that Circuit Rule 36 not apply, or (2) the parties agree that there not be a reassignment. If the first exception is not applicable, the Clerk will reassign the action to a different Judge fifteen (15) days after receipt of the mandate from the Court of Appeals unless the parties agree that there need not be a reassignment and file a request that the Judge previously assigned to the case retry the case within that time.

When reassigning a case pursuant to Circuit Rule 36, the Clerk employs a similar random lot system as used for all cases when they are first filed. This system is also used when a judge recuses or disqualifies him or herself from a case and when it is necessary for other reasons to reassign a case.

Cross-references: 28 U.S.C. § 137; *Fed. R. Civ. P.* 42(a); Circuit Rule 36; Local Rule 40.1(h)

Motion to Quash or Enforce Discovery Process in Foreign (non-District) Litigation

When an objection to a notice of deposition or subpoena to produce documentary evidence has been issued for a deposition to be taken within the Southern District of Indiana in connection with litigation pending in another District, the objection is assigned to the Clerk's miscellaneous docket and presented to the Court for ruling.

A similar procedure is followed with respect to an application to enforce such a notice or subpoena.

The filing fee for opening a miscellaneous case is \$20.00 and will be collected at the time an objection to a notice of deposition or subpoena is filed.

Cross-references: *Fed. R. Civ. P. 45*

Civil Legal Assistance

Following is a list of organizations that may assist individuals who cannot afford to hire an attorney.

Legal Services Organization
of Indiana
151 N. Delaware Street
Indianapolis, Indiana 46204

Inmate Legal Assistance Clinic
Bloomington, Indiana 47405

Lawyers Referral Program
Indianapolis Bar Association
10 W. Market Street, Suite 440
P.O. Box 2086
Indianapolis, Indiana 46206

Legal Service Organization of
Indiana, Inc.
101 Court

Evansville, IN 47708

Legal Aid Society of
Evansville, Inc.
200 Administration Building
Civic Center
Evansville, IN 47708

Legal Services Organization
of Indiana, Inc.
3303 Plaza Drive
New Albany, IN 47150

Legal Aid Society
425 W. Muhammad Ali Blvd.
Louisville, KY 40202

President
Terre Haute Bar Association
Lawyer Referral Information
Terre Haute, IN 47807

Mapleton Fall Creek Christian Legal Clinic
418 E. 34th Street
Indianapolis, Indiana 46205

Indiana Civil Liberties Union
445 N. Pennsylvania
Indianapolis, Indiana 46204

Court Reporters and Transcripts

Court Reporters

Court reporter Judy Faris Mason is assigned to court reporting primarily in the Evansville Division. Her telephone number is 812-422-6357.

The District Judges permanently assigned to the Indianapolis Division also share a pool of court reporters, whose duties include trials wherever in the District those judges may conduct proceedings. Glen Cunningham is the coordinator of this pool, and general inquiries should be directed to him. The roster of this pool is the following:

Glen Cunningham (*Coordinator*) (317) 634-7292

Fred Pratt (317) 916-8209

Pat Cline (317) 634-0402

The above pool also supplies court reporting services for the Magistrate Judges assigned to the Indianapolis Division whenever possible. Proceedings conducted before Magistrate Judges may also be recorded by electronic sound device or through contract with an independent court reporting service.

If counsel desires to have a particular proceeding reported which may not ordinarily be reported (such as a hearing on a motion for proceedings supplemental), the courtroom deputy of the judicial officer who will preside should be contacted and informed of this request well in advance of the hearing.

Transcripts

When ordering a transcript, attorneys should make initial, direct telephone contact with the court reporter, whereupon the court reporter will indicate the amount of the requested advance deposit, which should then accompany the completed 7th Circuit Transcript Information Sheet.

Requests for daily copy transcript service should be made to Glen Cunningham, the coordinator of court reporters, or to the reporter assigned to the presiding judge at least two weeks prior to the commencement of the trial or hearing.

Guide For Ordering Transcripts:

- 1. Telephone Contact With Court Reporter**
- 2. Prepare 7th Circuit Transcript Information Sheet**
- 3. Submit Daily Copy Requests Two (2) Weeks Prior To Trial**

ADR/Arbitration/Summary Jury Trial

Pursuant to Local Rule 53.2, the Court may set any case for nonbinding alternative dispute resolution, with consent of the parties.

When the parties seek to resort to alternative dispute resolution or arbitration of a case or a portion of a case, they should present that request in writing to the Court. The request should outline, with as much specificity as possible, the preferred procedures and anticipated timetables, the issue(s) to be considered and the stipulated or anticipated effect of the outcome of the procedure on the pending litigation.

The Court is committed to the process of alternative dispute resolution as an invaluable alternative to the cost and delay accompanying litigation. The Court encourages parties to give serious consideration to any of the programs that fall within the penumbra of alternative dispute resolution techniques, including early neutral evaluation, mediation, arbitration, summary jury trial, and mini-trial. Indeed, Local Rule 16.1(d)(2)(J) requires that the parties consider alternative dispute resolution and advise the Court of their intent.

The parties may proceed to alternative dispute resolution on their own, or they may request the participation of a Magistrate Judge. The request should be made to the Judge or Magistrate Judge to whom the case is assigned; the request should be in writing. In the event the request is not initiated by the parties, the Judge or Magistrate Judge to whom a particular case is assigned generally will request that the parties engage in early neutral evaluation, mediation, or settlement negotiations before a Magistrate Judge. The participating Magistrate Judge will determine who shall attend the process and the preparation required and advise the parties accordingly.

Parties seeking a summary jury trial should confer with the assigned judicial officer through his or her courtroom deputy clerk.

Notice of Attack upon Constitutionality of Federal or State Legislation

When the constitutionality of an act of Congress or any State statute is or is intended to be drawn into question in a case Local Rule 24.1 should be *closely* consulted to ensure compliance with applicable notification procedures.

Cross-reference: Local Rule 24.1

APPENDIX

to the

ATTORNEY'S HANDBOOK

APPENDIX X	DESCRIPTION
1	Flow Chart (Typical Progression of Civil Litigation) (only available in hard copy or at: http://www.insd.uscourts.gov/att_handbook.htm)
2	Flow Chart (Typical Progression of an Appeal) (only available in hard copy or at: http://www.insd.uscourts.gov/att_handbook.htm)
3	Selected Government Agency Telephone Numbers
4	Sample Forms Relating to Default Entry and Judgment
5	Praecipe for Writ of Execution
6	(1) Notice of Consent to Exercise of Jurisdiction by a United States Magistrate Judge and (2) Consent to Proceed Before a United States Magistrate and Order of Reference
7	Suggested Possible Titles for Documents
8	(1) Notice of Lawsuit and Request for Waiver of Service of Summons, Fed. R. Civ. P. Form 1A and (2) Waiver of Service of Summons, Fed. R. Civ. P. Form 1B
9	Application for Membership on Civil Legal Assistance Panel

Selected Government Agencies Quick Reference Telephone Information

U.S. District Court Clerk's Office
 Indianapolis 317-229-3700
 Evansville 812-434-6410
 Terre Haute 812-234-9484
 New Albany 812-542-4510

U.S. Court of Appeals
 for the Seventh Circuit
 Clerk's Office
 312-435-5850

U.S. Court Library
 317-229-3925
 FAX 317-229-3927

U.S. Bankruptcy Court Clerk's Office
 (IP) 317-229-3800
 FAX 317-229-3801
 (EV) 812-434-6470
 (NA) 812-542-4540
 (TH) 812-238-1550

U.S. Attorney's Office
 (IP) 317-229-2400
 FAX 226-6125
 (COLLECTIONS)
 317-229-2400
 (EV) 812-465-6324
 (TH) 812-234-8336
 (NA) 812-948-5242

Federal Community Defender
 (IP) 383-3520

U.S. Marshal
 (IP) 317-226-6566
 FAX 226-7695

U.S. Probation Office
 (IP) 317-229-3750
 FAX 229-3760
 (NA) 812-542-4525
 (Muncie) 765-747-5567
 (Bloom.) 812-334-4212
 (EV) 812-434-6450
 (TH) 812-232-0200
 Bureau of Prisons
 Cincin. 513-684-2603
 Detroit 313-226-6186

AT&F 317-226-6234

DEA 317-226-7977
 Customs Service 317-248-4151
 EEOC 317-226-7229
 FBI 317-639-3301

Immigration &
 Naturalization 317-226-6009
 IRS 317-226-7751
 Postal Inspectors 317-328-2500
 SBA 317-226-7272
 Social Security 800-772-1213
 VA 317-226-7706

Marion County Clerk 317-327-4740
 Indiana Atty General 317-232-6201
 Indiana DOC 317-232-5716
 Indiana State Parole 317-232-1722
 Indiana State Police 317-232-8250
 Indpls. Police Dept. 317-236-3000
 Marion Co. Crim.. Probation 317-236-3060
 Marion Co. Prosecutor 317-236-3522
 Marion Co. Sheriff (Jail) 317-633-5181

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE,)	
Plaintiff,)	
)	
vs.	)	Cause No. IP 01-0000-C-A/B
)	
JANE DOE,)	
Defendant.)	

REQUEST TO ENTER DEFAULT

To the Clerk of the U.S. District Court for the
Southern District of Indiana

Please enter the default of the defendant for failure to plead or otherwise defend as
provided by the Federal Rules of Civil Procedure as appears from the affidavit of
_____ attached hereto.

[Name]
Counsel For Plaintiff

Pursuant to the request to enter default and affidavit filed, default is hereby entered, on
this _____ day of _____, 20____ against Defendant for failure to plead or otherwise
defend this action.

Clerk

Appendix 4, Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE,)
Plaintiff,)
)
vs.) Cause No. IP 01-0000-C-A/B
)
JANE DOE,)
Defendant.)

AFFIDAVIT FOR ENTRY OF DEFAULT

STATE OF INDIANA)
) §:
COUNTY OF MARION)

_____, being duly sworn, says that he/she is the attorney for Plaintiff in the above-entitled action; that the complaint and summons in this action were served on Defendant on _____; that service was made on _____ by _____ (specify method of service); that the time within which Defendant may answer or otherwise move as to the complaint has expired; that the Defendant has not answered or otherwise moved and that the time for Defendant to answer or otherwise move has not been extended.

[Name], Counsel For Plaintiff
SWORN TO AND SUBSCRIBED before me this ____ day of _____, ____.

[Notary Public]

[Printed]

My commission expires:

My county of residence:

Appendix 4, Page 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE,)	
Plaintiff,)	
)	
vs.	)	Cause No. IP 01-0000-C-A/B
)	
JANE DOE,)	
Defendant.)	

REQUEST FOR DEFAULT JUDGMENT

To the Clerk of the U.S. District Court for the
Southern District of Indiana

Upon the affidavit attached hereto, please enter judgment by default against

_____, Defendant in the above-entitled action, for

_____ dollars (\$____.__), plus costs.

[Name]
Counsel For Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE,)	
)	
Plaintiff,)	
)	
vs.	)	Cause No. IP 01-0000-C-A/B
)	
JANE DOE,)	
)	
Defendant.)	

AFFIDAVIT FOR ENTRY OF DEFAULT JUDGMENT

STATE OF INDIANA)	
)	§:
COUNTY OF MARION)	

_____, being duly sworn, says that he/she is the attorney for Plaintiff(s) in the above-entitled action; that the amount due to Plaintiff from Defendant is \$_____, plus costs; and that Defendant is not an infant or incompetent person; that the default of the Defendant has been entered for failure to appear in the action; that the amount shown is justly due and owing and that no part thereof has been paid; and that the defendant is not in the military service of the United States.

[Name], Counsel For Plaintiff

SWORN TO AND SUBSCRIBED before me this ____ day of _____, _____.

[Notary Public]

[Printed]

My commission expires:

My county of residence:

Appendix 4, Page 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE,)	
Plaintiff,)	
)	
vs.	)	Cause No. IP 01-0000-C-A/B
)	
JANE DOE,)	
Defendant.)	

DEFAULT JUDGMENT

Defendant _____, having failed to plead or otherwise defend in this action, and default having been entered, **NOW**, upon application of the Plaintiff and upon affidavit that Defendant is indebted to the Plaintiff in the sum of \$ _____, that Defendant is not an infant or incompetent person and not in the military service of the United States, it is hereby **ORDERED, ADJUDGED AND DECREED**, that Plaintiff recover of Defendant the sum of \$ _____ plus costs of this action.

Clerk

DATED:

Appendix 4, Page 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

XXX)	
	Plaintiff,)	
vs.		)	Misc. No. IP
)	
YYY)	
	Defendant,)	
)	
vs.)	
ZZZ)	
	Garnishee.)	

PRAECIPE FOR WRIT OF EXECUTION

TO: Clerk, U.S. District Court

Please issue a Writ of Execution in the above matter

- (1) against Defendant, _____ and Garnishee,
_____.
- (2) and index this Writ:
- (a) against Defendant, _____ and Garnishee,
_____.

(3) Amount Due: \$

Service Costs:

Clerk of U.S. District Court:

Total Due: \$

By:
Attorney for Plaintiff

Appendix 5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

	)	NOTICE, CONSENT, AND ORDER OF
	)	REFERENCE - EXERCISE OF JURISDICTION
Plaintiff,	)	BY A UNITED STATES MAGISTRATE JUDGE
vs.)	
	)	Cause No.
Defendant.)	

**NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a United States magistrate judge of this district court is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

**CONSENT TO THE EXERCISE OF JURISDICTION
BY A UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment. (Note: Return this form to the Clerk of the Court if you consent to jurisdiction by a magistrate judge. Do not send a copy of this form to any district judge or magistrate judge.)

Signature(s)

Party Represented

Date

ORDER OF REFERENCE

IT IS HEREBY ORDERED that this case be referred to _____, United States Magistrate Judge, for all further proceedings and the entry of judgment in accordance with 28 U.S.C. § 636(c), FED. R. CIV. P. 73 and the foregoing consent of the parties.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF IT IS SIGNED. AN ORDER OF REFERENCE WILL BE ISSUED ONLY IF ALL PARTIES CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

Selected Possible Titles for Documents

DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

DEFENDANT'S REPLY BRIEF TO
PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION

DEFENDANT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION OVER THE PERSON OR RESIDENCE

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION OVER THE PERSON OR RESIDENCE

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION OVER THE PERSON OR RESIDENCE

DEFENDANT'S REPLY BRIEF TO
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS
FOR LACK OF JURISDICTION OVER THE PERSON OR RESIDENCE

THIRD-PARTY DEFENDANT'S MOTION TO TRANSFER VENUE
DUE TO FORUM NON CONVENIENS

BRIEF IN SUPPORT OF
THIRD-PARTY DEFENDANT'S MOTION TO TRANSFER VENUE
DUE TO FORUM NON CONVENIENS

PLAINTIFF'S RESPONSE IN OPPOSITION TO
THIRD-PARTY DEFENDANT'S MOTION TO TRANSFER VENUE
DUE TO FORUM NON CONVENIENS

DEFENDANT'S RESPONSE IN SUPPORT OF
THIRD-PARTY DEFENDANT'S MOTION TO TRANSFER VENUE
DUE TO FORUM NON CONVENIENS

THIRD-PARTY DEFENDANT'S REPLY TO
PLAINTIFF'S RESPONSE IN OPPOSITION TO
THIRD-PARTY'S MOTION TO TRANSFER VENUE
DUE TO FORUM NON CONVENIENS

RESPONDENT'S RETURN TO ORDER TO SHOW CAUSE
OR, IN THE ALTERNATIVE,
MOTION TO DISMISS

PETITIONER'S REPLY TO
RESPONDENT'S RETURN TO ORDER TO SHOW CAUSE
OR, IN THE ALTERNATIVE,
MOTION TO DISMISS

Appendix 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

)	
Plaintiff,)	
vs.	)	Cause No.
)	
Defendant.)	

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

Fed. R. Civ. P. Form 1A

TO: (A) [as B of C]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Southern District of Indiana and has been assigned docket number (D).

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ____ day of _____, _____.

(Signature of Plaintiff's Attorney or Deputy Clerk if

Unrepresented Plaintiff)

Notes:

- A--Name of individual defendant (or name of officer or agent of corporate defendant)
- B--Title, or other relationship of individual to corporate defendant
- C--Name of corporate defendants, if any
- D--Docket number of action

Appendix 8

Plaintiff,)
vs.) Cause No.)
Defendant.)

Fed.R.Civ.P. Form 1B

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the *Federal Rules of Civil Procedure* requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

APPLICATION FOR MEMBERSHIP ON CIVIL LEGAL ASSISTANCE PANEL

I, _____, having been admitted to practice before the United States District Court for the Southern District of Indiana and being a member in good standing of the Bar of such Court, do hereby apply for membership in the Civil Legal Assistance Panel of that Court. In support of this application I have supplied the following information:

Full Name:

Firm or Business:

Business Address:

Business Telephone.:

Specialized Area of Law (if any):

Year of Admission to the Southern District of Indiana:

Please rank, in order of preference ("1" being the most preferred, "5" being the least preferred) your preference for accepting a case which involves the following types of matters:

- _____ Employment discrimination action
- _____ Civil rights action filed by person in custody
- _____ Other civil rights action
- _____ Social Security appeal
- _____ Other action - state preference:

If you are able to consult and advise in languages other than English, please indicate below:

- ☐ Spanish ☐ Other:

Please indicate your preference as to level of involvement:

- _____ Handle entire litigation through trial, or if not, would prefer to:
- _____ Assist litigant with discovery

- _____ Assist litigant with making and responding to dispositive motions (e.g. motion to dismiss, motion for summary judgment)
- _____ Serve as stand-by counsel at trial
- _____ Assist another attorney who has primary responsibility for case

Please check below if you would consider:

- _____ Sharing responsibility for a case with another lawyer
- _____ Working with a law student assigned to the case, who could assist with research, drafting, investigation

Please indicate all Divisions of this court in which you are willing to accept a case:

- | | |
|---------------------------------------|--------------------------------------|
| <input type="checkbox"/> Indianapolis | <input type="checkbox"/> Terre Haute |
| <input type="checkbox"/> Evansville | <input type="checkbox"/> New Albany |

In making this application, I represent that I am willing to represent civil litigants determined to be eligible for representation under any applicable statutory authority and for whom the request for counsel has been made pursuant to Rule 4.6 of the Local Rules of the United States District Court for the Southern District of Indiana. I recognize that I may decline a request by the court for representation of an individual but I will make a reasonable effort to accept a request when I am able to do so. In addition, I shall supplement this Application in writing from time to time as requested by the Court and as circumstances warrant so as to keep the Court informed of any change in my address or other information relevant to my membership on the Civil Legal Assistance Panel.

Date: _____

Signature: _____

For use by the Court

Appointed to Civil Legal Assistance Panel of Attorneys on _____, 20____.

Member of sub-panel for the _____ Division.

Execute original only and return to: District Court Clerk
United States Courthouse, Room 105
46 East Ohio Street
Indianapolis, Indiana 46204

If you have any questions, please call (317) 229-3700